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Case No. 88-1737

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

ELMER R. BARBEE

PETITIONER

VS

THE UNITED STATES

RESPONDENT

PETITIONER'S REPLY BRIEF TO THE UNITED STATES BRIEF IN OPPOSITION

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FOURTEENTH AMENDMENT

ARGUMENTS

A. THE FACTS OF THIS CASE HAVE BEEN MISSTATED REPEATEDLY BY THE LOWER COURTS AND THE UNITED STATES.

Barbee was not removed because his first and second level supervisors refused to reissue his flight clearance. (Pet for Writ of Cert pg. 6-12) As presented by Barbee's supervisor, the reasons for his removal were his complaints as rendered to Col. Charles R. Nielsen, the Inspector General, that resulted in the October - November 1979 investigation conducted under Secretarial regulation, AR 20-1. (APPENDIX A) The reasons given in APPENDIX A are identical to those complaints listed on Barbee's Inspector General Action Request DA 1559. (Pet Supp Brief C-15). The Inspector General's Investigation did not conclude that Barbee made false statements, and Nielsen testified during Barbee's

hearing that he could find no false statement made by Barbee. (Pet. Supp Brief C46-49) In accordance with paragraph 3-4 of AR 20-1, June '78 or January '80, the Inspector General was the only authority who could state that false statements were made during his investigation; and he was responsible for notifying the commander immeadiately of any such incident.

The US Claims Court never considered these facts. (Pet for Writ of Cert. A1-A10) Even though Barbee's suit was filed almost two years prior to the Fausto decision, the US Claims Court used it as a basis for dismissal based on lack of jurisdiction. Barbee then used the Special Counsel's investigation and Complaint for Disciplinary Action against Barbee's first level supervisor, Major Leslie T. Everett, as the "appropriate authority" for a suit for

back pay to lie before the U.S. Court of Appeals. Barbee also corrected the facts and presented constitutional arguaments; however, the U.S. Court of Appeals chose not to address these and affirmed the lower courts decision. As shown, the Brief in Opposition, pages 2,3, and 4 are incorrect statements of fact in that they were derived from the incorrect facts of the U.S. Claims Court.

Barbee's initial defense of the 22 February 1980 Proposed Adverse Action was that the action was in violation of AR 20-1 dated 15 January 1980. Those violations were clearly and precisely pointed out to the Adjutant General. (APPENDIX II, III, IV) Irregardless of this, the Adjutant General, as the agency head, removed Barbee in violation of AR 20-1 (Pet for Writ of Cert. App D3-4).

B. THE OFFICE OF THE INSPECTOR GENERAL, BY LAW, IS THE APPROPRIATE AUTHORITY TO STATE THAT BARBEE SUFFERED AN UNWARRANTED PERSONNEL ACTION.

10 USC 3014 "Office of the Secretary of the Army" states in (b)(5) that:

> "(b)The Office of the Secretary of the Army is composed of the following-
> (5)The Inspector General of the Army"

10 USC 3014 (c)(1) states that:

> "The Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the following functions:---
> (E) Inspector General"

10 USC 3014 (c)(2) states that:

> "...No office or other entity may be established or designated within the Army Staff to conduct any of the functions specified in paragraph (1)."

10 USC 3020 "Inspector General" states in paragraph e that:

> "(e)The Inspector General shall have such deputies and assistants as the Secretary of the Army may prescribe."

COL Rinkel is a deputy of the Inspector General appointed by the Secretary of the Army. The 7 March 1989

letter signed by COL Rinkel was given to Barbee based on evidence submitted by him, and reviewed by the Chief of Investigations Division, the Inspector General Legal Advisor, and the Chief of Assistance Division. (Pet for Writ of Cert. D 1-4) These persons, by law, are the "appropriate authority" to state that Barbee's removal was unwarranted based on Inspector General Regulations. By law, no one else in the Army has the authority to review or interpret Inspector General Regulations for the Secretary. Respondent's comments and footnotes contained in their Brief in Opposition at page 6 are therefore invalid. Respondent's Brief in Opposition APP 1a &2a was written based on recommendations by John S. Groat, Department of Justice; Major Cathy Cates, The Office of the Judge Advocate General; and National Guard legal

representatives. It was based on assumptions and on inapplicable portions of AR 20-1 in an attempt to provide a defense for the United States. (Pet Supp Brief 11-14)

In that Chapter 5 of AR 20-1, which pertained to inspections, not investigations, was utilized to state that Army Regulations did not apply to the National Guard; and in that page i of the June 1978 version of AR 20-1 stating that it was applicable to the National Guard was not considered, Respondants Brief in Opposition Appendix is invalid. (Pet Supp Brief 3-4)

The adverse action against Barbee was initiated on 22 February 1980, (Appendix A) therefore the 15 January 1980 version of AR 20-1 was in effect. All of those provisions and requirements cited in the 7 March 1989 letter from the Office of the Inspector General were

contained in the January 1980 version of AR 20-1 including the applicabilitiy paragraph 1-2. AR 20-1, paragraph 1-12 required coordination with the Office of the Inspector General prior to utilizing Inspector General records for adverse personnel actions such as "relief from duties." The Adjutant General did not comply with this requirement prior to initiating the adverse and prohibited action against Barbee.

In that the 7 March 1989 letter is correct, the Office of the Inspector General is the "appropriate authority" to state that the Adjutant General did violate Secretarial regulations and misused AR 20-1 in proposing Barbee's removal.

C. THE OFFICE OF THE SPECIAL COUNSEL CONCLUDED THAT BARBEE SUFFERED REPRISAL ACTION FOR EXERCISE OF APPEAL RIGHTS.

John P. Gidez, attorney for the Special Counsel, stated during arguments before the MSPB that:

> "James M. Coleman, the Hearing Examiner at Barbee's adverse action hearing, issued a decision in which he denied Barbee's appeal. Coleman noted that Nielsen did not find that Barbee had knowingly made false statements. Further, Coleman found that Barbee "established that there could well have been harassment on the part of Major Everett...evidenced by the six months time frame in getting him (Major Barbee) returned to flight status. "In addition, Coleman found that Barbee had presented evidence 'baring [SIC] out the fact that Major Everett demonstrated incompetence' and noted that Barbee's allegations of incompetence were supported, in part, by Everett's own admissions. In spite of these findings, Coleman concluded that Barbee 'did, in fact with foreknowleged of intent and consequence, knowingly make untruthful charges against Major Everett.' <u>This conclusion is illogical based on Coleman own findings</u>. Moreoever, Coleman's decision is at odds with Nielsen's sworn testimony that Barbee did not testify falsely during his investigation as well as with Barbee's own testimony in which he denied making untrue statements. Ingram, who had initially referred Barbee's allegations to the Inspector General for investigation, essentially adopted Coleman's

decision, thus compounding Coleman's error."
(Emphasis Added)

The OSC also cited Kennedy v. Department of the Army, Docket No. PH 07528110483 (MSPB July 17, 1984) as paralleling Barbee's case. Kennedy supra stated that:

"...[S]ince these statements were made in connection with and under a grievance, they were privileged statements which could not form the basis for the disciplinary action."

The Board noted that an employee "can support his position only through statements," that punitive action based upon such statements was impermissible and could not be sustained. (Kennedy, Supra, Slip op. at 6)

These arguments submitted by Gidez and the Complaint for Disciplinary Action by the OSC (Pet for Writ of Cert. App C) support those findings in the 7 March 1989 letter from the Office of the Inspector General.

D. WHEN AN ADJUTANT GENERAL VIOLATES PROCEDURES ESTABLISHED BY SECRETARIAL REGULATIONS, 32 USC 709 DOES NOT DEFINE HIM AS THE "APPROPRIATE AUTHORITY" AS PER FAUSTO, NOR DOES IT BAR JUDICIAL REVIEW.

> "(e)Notwithstanding any other provision of law and under regulations prescribed by the secretary concerned--"

This phrase establishes the ground rules and the requirements to be met by the adjutant general prior to him having the authority to administer any of those 6 paragraphs listed under (e). Petitioner has shown that two separate investigations were conducted, one of which was the only "appropriate authority" designated by law. Both investigations determined that there were no false statements or bases for an adverse action. Petitioner has also shown that the adverse action was prohibited by law, by Secretarial

regulation, and by the First and Tenth Amendments to the Constitution. The Adjutant General was outside of his jurisdiction. The decision made by the Adjutant General was based on an unwarranted and prohibited personnel action as defined in Secretarial Regulations.

32 USC 709 (e)(5) does not bar judicial appeal or review. Technician Personnel Regulation (TPR) 752, 23 February 1987, paragraph 2-19 C, (2) clearly states that the appeal referred to in 32 USC 709 (e)(5) is only an adminstrative appeal or review. This clearly leaves open judicial review; therefore the Claims Court improperly dismissed Petitioner's claim for back pay.

The Office of the Inspector General was established by Congress as "necessary and proper" to safeguard

those records and testimony of individuals making complaints of a federal nature which effect efficiency, discipline, and morale of the Department of the Army. If the state appointed Adjutant General is allowed to circumvent those procedures established by the Secretary of the Army through the Office of the Inspector General, the Adjutant General has in effect rendered that Government agency ineffective.

E. THE AGENCY ARBITRARILY AND CAPRICIOUSLY APPLIED SECRETARIAL REGULATIONS, THEREBY DENYING BARBEE DUE PROCESS ANDEQUAL PROTECTION UNDER THE LAW.

For years the National Guard applied both the June 1978 and January 1980 versions of AR 20-1, to protect the integrity of the Inspector General Investigation. (Pet Supp Brief. App C) According to the National Guard, this was done to protect the testimony of witnesses; however, Barbee's testimony

was released by the Adjutant General, in violation of paragraph 1-12 of AR 20-1, for purposes of a removal action. After nine years, the agency now states that AR 20-1 was inapplicable to Barbee's case. (Brief in Opp. App 1 and 2a) This is an arbitrary and capricious application of Secretarial regulations by the agency thereby denying Barbee equal protection under that regulation. (14th Amendment to the Constitution)

F. A COURT IS THE ONLY FORUM AVAILABLE TO CORRECT A PROHIBITED PERSONNEL ACTION TAKEN BY AN AJUTANT GENERAL AGAINST A TECHNICIAN.

Army Regulation 20-1 was violated by the agency and so stated by the "appropriate authority" by letter dated 7 March 1989. (Pet for Writ of Cert. App D) The Office of the Inspector General, by law, (10 USC 3014 & 3020) is the only Army agency that can make that determination.

In April 1985, James C. Hise, Chief, Office of Legal Advisor and Joseph R. Reyna, Chief, Labor Relations and Personnel, both of National Guard Bureau, argued before the MSPB that:

> "Of course the Bureau does not argue that 709 (e) forecloses judicial review of a final decision of an adjutant general. See Chaudoin v. Atkinson 494 F. 2d, 1323, 1328-9, n5 (3d Cir 1974) Rather 709 (e)(5) must read to foreclose further adminstrative appeals as in this case. New Jersey Air National Guard, 677 F, 2d at 280, n.3."

Therefore, no other adminstrative body can revoke a decision of an adjutant general. This leaves only a court of law to mandate corrective action of an unwarranted personnel action suffered by a National Guard technician.

CONCLUSIONS

A prohibited personnel action was committed by the agency against Barbee. The Inspector General's Office is the

"appropriate authority" as identified in Fausto to make that determination and has done so by letter dated 7 March 1989. The Special Counsel conducted a separate and independent investigation and arrived at the same conclusion as the Office of the Inspector General.

ARTICLE I, Section 8 of the Constitution provides for the Federal Government to govern such part of them (National Guardsmen Technicians) as may be employed in the service of the United States. ARTICLE III, Section 2 and the TENTH AMENDMENT to the constitution give the power to the Courts to adjudicate Barbee's Case. (Pet for Writ of Cert. 20-21) The proponderance of the evidence clearly shows that Barbee was the victim of a reprisal action for his complaints rendered to the Inspector General, and that Barbee's supervisor and the Adjutant General violated

Secretarial regulations in initiating and carrying out the adverse action against him. This was a violation of Barbee's appeal rights. Therefore, Barbee's Petition for Writ of Certiorari in this case should be granted.

Respectfully Submitted,

Elmer R. Barbee

Attorney, Pro Se

Route 7, Box 345

Manchester, Ky 40962

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 17th day of August 1989, I caused to be placed in the United States mail (first-class, postage prepaid) copies of "PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSTITION", addressed as follows:

Solicitor General
Department of Justice
Washington, D. C. 20530

17 August 1989

Elmer R. Barbee

Elmer R. Barbee
Attorney, Pro Se

AASF #1-RDU 22 February 1980

SUBJECT: Notice of Proposed Adverse Action (Removal)

Major Elmer R. Barbee
Aircraft Maintenance Officer
Army Aviation Support Facility #1
Morrisville, NC 27560

1. This is notice that I propose to remove you from your Full-Time employment with the North Carolina Army National Guard not earlier than Thirty calendar days from the date you receive this notice. The reason for this proposed action is that during ~~a recent~~ Inspector General investigation you made false, malicious, unfounded and highly irresponsible statements against me (your supervisor) with the express intent to destroy the reputation, authority, and official standing of me in my position as facility commander.

2. You, in a sworn statement (DA Form 3881 attached) accused me of personnal harrassment against you and job incompetence in my duties. In a thorough and impartial investigation involving sworn testimony by personnel who I assume you asked to testify in your behalf to substantiate the charges you made against me, it was determined the charges against me were totally unsubstantiated.

3. I consider your acts in this regard to be of the highest magnitude in your efforts to have me relieved of my job. The statement made by you to Major Owens to the effect that "it looked as if you were going and you were going to take Everett and Guard with you," leaves no doubt in my mind the intent behind the charges you initiated against me.

4. I regard your charges against me that resulted in the Inspector General

investigation to be a deliberate attempt to slander me, to bring discredit to me and my position, to embarrass me and a flagrant gross effort to undermine my position to the absolute maximum and to create the maximum dissension possible within the AASF #1 workforce.

5. You may review the material relied upon to support this action in the Technician Personnel Office, AGONC, Raleigh, NC. If you do not understand the reasons your removal is being proposed, contact COL Lon W. Taylor or Major Irvin R. Ellington in the Technician Personnel Office for further information. Advice and assistance may be obtained from these aforementioned individuals concerning the proposed action, and the regulations pertaining to it.

6. You may answer this notice personally, or in writing, or both

personnally and in writing to COL Beale, DCSOI and may submit affidavits in support of your answer. You will be allowed fifteen calendar days from the date of this notice to submit your answer. Consideration will be given to extending this period if you submit a request stating your reasons for desiring more time. Full consideration will be given to any answer you submit. No decision to effect the proposed action has been made or will be made until after the time allowed for your reply.

7. You will be allowed up to a maximum of 16 hours of official time to review the material relied on to support your reasons, to secure affidavits, and to prepare an answer to this notice. You should arrange with the undersigned for the use of official time.

8. As soon as possible after your answer is received, or after expiration of the 15 day limit if you do not answer, you will be given a notice of original decision.

9. During the notice period, you may request to work in normal technician status. However, if you fail to report to work or are not ready, willing and able to work, you will be carried as absent without leave. Requested and approved leave or leave without pay is also authorized during the notice period.

10. Duplicate copy provided for personal use.

Incl
as

LESLIE T. EVERETT JR.
MAJ AR NCARNG
Commander, AASF #1

7 April 1980

AIRCRAFT MAINTENANCE SHOP
NORTH CAROLINA ARMY NATIONAL GUARD
POST OFFICE BOX B
MORRISVILLE, NORTH CAROLINA 27560

SUBJECT: Appeal of Decision to Remove dated 31 March 1980

MAJOR GENERAL WILLIAM E. INGRAM
The Adjutant General of the State of North Carolina
Post Office Drawer 26268
Raleigh, North Carolina 27611

1. This appeal is submitted for your final adjudication on the decision to remove me from my employment effective 11 April 1980. Listed below are my reasons for contesting this adverse action.

a. MAJ Everett stated in the "Notice of Proposed Adverse Action,

(Removal), dated 22 February 1980, "the reason for this proposed action is that during a recent Inspection General investigation, you made false, malicious, unfounded, and highly irresponsible statements against me (your supervisor) with the express intent to destroy the reputation, authority, and official standing of me in my position as Facility Commander". No evidence was produced by MAJ Everett indicating that I made untrue statements during my testimony.

b. AR 20-1 prohibits any type of disciplinary or other adverse action against an individual for registering a complaint to the Inspector General unless that individual knowingly makes untruthful statements. I made no

untruthful statements, knowingly, during my testimony with the Inspector General. If the Inspector General had determined that I made untruthful statements, he was obligated to notify me immediately and then inform the appropriate commander promptly of the details of any such incident. This was not done during the investigation.

c. The decision to remove was based on two documents entered as evidence. One was a DA Form 3881, signed 25 October 1979 by MAJ Everett and COL Nielsen. This document was nothing more than a "Rights Waiver Certificate." It provided no information as to who levied the charges or that any untruthful statements were made. The other document provided was a

"Memorandum to MAJOR Leslie T. Everett, Jr." This document verbally exonerated MAJ Everett on 28 November 1979, but again does not indicate that untruthful statements were made by me.

2. In conjunction with the appeal submitted, I formally request a hearing before a fair, impartial, and objective hearing examiner from the current consolidated file of qualified examiners.

3. Again, I respectfully submit that my rights have been infringed upon by this proposed action. I respectfully submit to you that this removal proposal, and the decision to remove, were reprisal actions on the part of MAJOR Leslie T. Everett, Jr. based on the Inspector General's investigation. If it were a legitimate proposal, it would have been

processed in a much more expedient manner.

4. I would appreciate, very much, your timely handling of this request. Future correspondence for me should be sent to: MAJOR Elmer R. Barbee, Route 1 Box 20, New Hill, NC 27562. My home phone number is 919-362-4031. Again, I would appreciate your time and your expediant consideration to this matter.

ELMER R. BARBEE

MAJ AR NCARNG

October 30, 1980

Major General William E. Ingram
Adjutant General
State of North Carolina
P. O. Drawer 26268
Raleigh, North Carolina 27611

RE: MAJOR ELMER R. BARBEE

Dear General Ingram:

I appreciate the opportunity to both present this letter and the enclosures to you for consideration in Major Barbee's case and also to appear before you personally on his behalf.

Although I am sure it is part of your file, I would like to present a copy of the Memorandum in Support of the Findings of Fact, Conclusions of Law and Recommendations that I furnished to Colonel Coleman for his consideration. The important aspect of this case which affects all members of the National

Guard and transcends the individual plight of Major Barbee, is the right that members of the North Carolina Nationla Guard have to request aid in resolving problems related to the Army and cooperation with the Inspector General's report without fear of reprisal, providing the member does not "knowingly"make false statements. This is not only a right guaranteed to members of the National Guard by regulation but is also a right guaranteed to all citizens by the First Amendment to the United States Constitution.

In support of Major Barbee's contentions in the case, I refer you to Finding of Fact 8 by Colonel Coleman which reads as follows:

> "8. Through cross examination of witnesses, the appellant established that there could well have been harrassment on the part of Major Everett. As evidenced by the six months time frame in

> getting him (MAJ Barbee) returned to flight status. The alleged incompetency of MAJ Everett by the Appellant was supported by MAJ Everett's own admission that he (MAJ Everett) knew very little about aviation maintenance and the fact that he (MAJ Everett) confessed that COL Guard should handle Major Barbee's medical restriction because he (Guard) could get more done in his position. The appellant further presented testimony baring out the fact that MAJ Everett demonstrated incompetence by questioning NCO's about the TARS trip, rather than confronting MAJ Barbee, their Supervisor."

In this finding, Colonel Coleman acknowledges that Major Barbee established at the hearing that there "could well have been harrassment on the part of Major Everett." The finding further is critical of the manner in which Major Barbee's return to flight status was handled by Major Everett. Colonel Coleman further found that the "alleged incompetency of Major Everett" was supported by Major Everett's own admissions in that he knew very little

about aviation maintenance and again in his handling of the removal of the medical restriction which prevented Major Barbee from flight status. Colonel Coleman also found "demonstrated incompetency" by the manner in which Major Everett handled the questioning of the NCO's about the TARS trip. Each of these findings illustrates that the record now before you clearly establishes that Major Barbee had just grounds to complain to you and for you to order the IG investigation. By virtue of the fact that the IG investigation was ordered by you, the record before you further indicates that you believed this to be a manner which deserved the attention of the Inspector General.

At the hearing and on other occasions, Major Barbee had diligently attempted to re-establish a relationship

with Major Everett and has clearly stated that he can and will work under the supervision, authority, and command of Major Everett if given the opportunity to do so.

The record before you further indicates that Major Barbee is highly competent in the area of maintenance and that the morale and quality of maintenance in th North Carolina Air National Guard has suffered from his removal in this action.

For the best interest of the North Carolina National Guard and in order to rectify an individual wrong against Major Barbee which has been committed in this matter, I respectfully ask you to reconsider the position of the North Carolina National Guard and to reinstate Major Barbee to his former position.

With the best of personal regards, I remain

Yours very truly,

HFT/ram

Howard F. Twiggs

Enclosures

In the Matter of the Dismissal)
of MAJOR ELMER R. BARBEE)MEMORANDUM

One of the most important functions of the Inspector General is to "maintain a system through which service members or others may request aid in resolving problems related to the Army, without fear of reprisal or the unnecessary disclosure of information, and insures that appropriate action is taken in each case." (Emphasis added). (AR 20-1, Section 1-8(6), P. 1-5).

Pursuant to AR 20-1, Section 1-6, p. 1-4, the Inspector General is a confidential representative of the Secretary of the Army and the Chief of Staff and inquires into and reports upon matters affecting mission performance and the state of economy, efficiency, discipline, and morale of the Department of the Army.

Major Barbee requested the assistance of the Inspector General through the Adjutant General. At the direction of the Adjutant General, this confidential investigation was made.

At the conclusion of the investigation, it was the opinion of Colonel Charles R. Nielsen, Inspector General, that certain allegations were substantiated and others were not. It was the Inspector General's recommendation that Major Everett, Colonel Guard, and Major Barbee be talked to separately; that Colonel Guard be admonished for some of his actions and that Major Barbee receive counselling. It was his further recommendation that the case then be closed, all as set forth by the Inspector General's report to the Adjutant General dated 12 November 1979,

which is attached hereto and incorporated herein by reference.

After the report of the Inspector General, on 22 February 1980, Major Everett wrote Major Barbee notifying him that the adverse action had been instituted against Major Barbee and cited the Technician's Personnel Pamphlet 904, Appendix A, page a-4, Section 14, as Major Everett's authority for doing so. This section of the TPP 904 states the offense, the explanation of same, and the suggested penalties as follows:

1. The offense is "false, malicious, irresponsible statements against management officials, supervisors or other employees."

2. The explanation is "making false, malicious, unfounded or highly irresponsible statements or unauthorized disclosures against other employees, supervisors, or officials with the intent to destroy or damage the reputation, authority, or official standing of those concerned."

3. The suggested penalty for first

offense is written reprimand,. suspension, or removal.

Section 14 of the Technician's Personnel Pamphlet must be read and considered in context with the right of all military personnel to request aid in resolving problems related to the Army from the Inspector General <u>without fear of reprisal</u>, with clarity and in terms which ring from the Bill of Rights, AR 20-1, Section 3-3 at page 3-1, states that:

> "a. All military and civilian personnel on duty with the Department of the Army have the right to register complaints orally or in writing with an Inspector General" and
>
> "e. Any type of disciplinary or other adverse action against an individual for registering a complaint, except as provided for in paragraph 3-4 is prohibited."

AR 20-1, Section 3-13 at Page 3-5 further provides:

> "Department of the Army personnel are prohibited from restricting in any manner any

> individual from registering a complaint or cooperating with an Inspector General. Moreover, once an individual has submitted a complaint or cooperated with an Inspector General, Department of the Army personnel are prohibited from initiating any type of disciplinary, adverse or other action against that individual solely because of the complaint or cooperation rendered the Inspector General."

The only exception is described in Paragraph 3-4, which provides that:

> " Any person on duty with the Department of the Army who, under the guise of presenting a legitimate complaint to an Inspecotr General, knowingly makes untruthful statements will be subject to disciplinary action. The appropriate commander will be informed promptly of the details of any such incident."

The evidence here has clearly failed to show that Major Barbee knowingly made untruthful statements. The Inspector General did not find that Major Barbee had "knowingly" made false statements. No disciplinary action was recommended by the Inspector General against Major Barbee. From the Inspector General's

own recommendation, it appears that Major Barbee believed the statements which he made during the course of the investigation (even though not all the allegations so made were proven), as evidenced at the conclusion of his report to the Adjutant General.

Military personnel must be free to seek the assistance of the Inspector General. They must then be allowed to communicate freely to the Inspector General. We ask only that Major Barbee be afforded these guaranteed rights. He did <u>not</u> "knowingly" make false statements.

To permit the dismissal of Major Barbee, a highly motivated career National Guard employee, on the basis of statements which he made in good faith during an Inspector General investigation would be a travesty of

justice and should clearly not be condoned.

Respectfully submitted,

_____

Howard F. Twiggs

Attorney for Major

Elmer R. Barbee